IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03/09/2003

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

Criminal Appeal No.575 of 1995

1. Vasu
2. Kadar
3. Mohan
4. Appavu @ Selvam @ Appa Selvam ..... Appellants

-Vs-

State rep. by Inspector of Police,
J-1, Saidapet Police Station,
Madras. ..... Respondent

Prayer: Appeal against the judgment dated 28.4.1995 in Sessions Case No.265 of 1994 delivered by the IV Additional Sessions Judge, Madras.

!For Appellant 1 : Mr.S.Shanmugavelayutham

^For Appellant 2 : Mr.V.Gopinath, Sr. Counsel
For Mr.K.V.Ananthanarayanan

For Appellants 3 & 4: Mr.M.Kandasamy

For Respondent : Mr.V.M.R.Rajendran
Addl. Public Prosecutor

:J U D G M E N T

(Judgment of the court was delivered by N.DHINAKAR, J.)

The appellants, four in number, were arrayed as A1 to A4 before the IV Additional Sessions Judge, Madras, in Sessions Case No.265 of 1994 , and in the judgment they will be referred to in the same order as they were arrayed before the learned Sessions Judge, for the sake of convenience. The allegation against the accused is that they, joining with Paramasivam and Sampath, who died subsequent to the occurrence, entered into a criminal

conspiracy and pursuant to the criminal conspiracy hatched by all the six accused, they formed themselves into an unlawful assembly and in furtherance of the common object of the said unlawful assembly, attacked Umar, the deceased in the case, with patta knives at about 12.15 p.m. on 2.12.1991 and that when the witnesses intervened, they were threatened by all the six accused. The learned Sessions Judge, while finding A1 to A4 guilty under Section 148 IPC and 302 r/w 149 IPC, sentenced each one of them to imprisonment for life under Section 302 r/w 149 IPC and no separate sentence was imposed against them under Section 148 IPC. The accused were acquitted of the charge framed under Section 506 Part-II IPC. Hence, the present appeal.

2. The case of the prosecution is as follows:- P.Ws.1 to 3 are the friends of the deceased and P.W.5 is the elder brother of the deceased. On 2.12.1991, the deceased asked his father to give him some invitation cards, which were printed in connection with the marriage of his sister, stating that they are required to be distributed by him to his friends. The father of the deceased asked him to go to the fancy store, which he was running, and collect the invitation cards, saying that he is going to the hospital, as he was suffering from sickness. The deceased accompanied by his friends, P.Ws.1 to 3, was proceeding to the fancy store run by his father to collect the invitation cards. While they were proceeding in Karaneeswarar Temple Street and when they were near Gowi Nivas Hotel, they were accosted by six persons, who came in a Maruthi van. The persons, who were found in the Maruthi van are A1 to A4 as well as Paramasivam and Sampath, who later died, and each of them was armed with a patta knife. They shouted that Umar must be cut and ran towards the deceased Umar. On seeing the accused, six in number, rushing towards Umar, his friends, P.W.1 to 3, ran away in different directions. The accused chased the deceased, and Paramasivam and Sampath cut Umar on the head and on the legs followed by A1, who cut him on the back of chest. A2 inflicted a cut on the stomach of Umar. The other accused, A3 and A4, were standing guard with patta knifes and threatened the witnesses. On receipt of the injuries, Umar fell down.

3. P.W.5, the elder brother of the deceased, was informed about the occurrence and on getting the information, he rushed to the place and found his brother lying on the ground with injuries. He removed Umar to Government General Hospital, Madras, and produced him before P. W.9, the casualty medical officer, who, on examining him, found him dead. The doctor issued Ex.P-8, a copy of the accident register and also sent an intimation, Ex.P-9, to the police station.

4. Meanwhile, P.W.1, who witnessed the incident, left the scene of occurrence and went to J-1 Saidapet Police Station, where he gave a complaint to P.W.18, Inspector of Police. The said complaint is Ex.P-1. On the basis of Ex.P-1, P.W.18 registered a case in Crime No.2625 of 1991 against the accused under Sections 147, 148 and 307 IPC. The printed first information is Ex.P-35. The express reports were despatched to the higher officials. He took up investigation in the crime and proceeded to the scene of occurrence accompanied by the SubInspector of Police, Ravindran, and on reaching the scene of occurrence, he was informed that Umar was removed to the hospital in an auto by his brother. P.W.18 sent the Sub-Inspector of Police to the

hospital to find out as to what happened to the injured Umar. After sending the Sub-Inspector of Police, he prepared an observation mahazar, Ex.P-2, and drew a rough sketch, Ex.P-36. He seized a blood-stained lungi, M.O.5, under Ex.P-5. At 2.15 p.m., a kerchief, M.O.6, which was lying at the scene of occurrence, was seized under a cover of mahazar, Ex.P-6. At 3.00 p.m., the Sub-Inspector of Police returned to the scene of occurrence and informed P.W.18 that Umar died at the hospital and his body is kept at the mortuary. He handed over Ex.P-9, death intimation, to P.W.18. The crime was, thereafter, altered to one under Section 302 IPC. P.W.18, after altering the crime to one under Section 302 IPC, proceeded to Government General Hospital, Madras, taking along with him the witnesses and conducted inquest over the dead body of Umar between 3.45 p.m. and 6.45 p.m. and the inquest report is Ex.P-37. He examined P.Ws.1 to 4 and others at the time of inquest and recorded their statements. After the inquest was over, the body was handed over to a police constable with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.17, Assistant Professor, Department of Forensic Medicine, Madras Medical College, Madras, conducted auotpsy on the body of Umar and found the following injuries:-

HEAD:
1.A transverse gaping cut injury present on the right side of forehead 8x3 cms bone deep. Cut fracture of skull present involving entire thickness of bone (7x0.3 cms) margins sharp, angles acute.
2.An oblique gaping incised wound present over left cheek 2x1 cms bone deep with cut fracture of maxilla present beneath it, involving the outer layer of bone. Margins sharp, angles acute.
3.Three transverse gaping cut injuries present on occipital region of scalp one below the other, measuring 8x1.5 cms bone deep, 10x1.8 cms bone deep and 9x1.5 cms bone deep. The upper and middle injuries are situated 1.2 cms apart. Beneath these injuries cut fracture of skull present.
i) 7.6 cm ii) 9.5 cm and iii) 8.5 cm in length, the entire thickness of bone involved.
4.Three transverse gaping cut injuries present on occipital region of scalp one below the other, measuring 8x1.5 cms bone deep, 10x1.8 cms bone deep and 9x1.5 cms bone deep. The upper and middle injuries are situated 1.2 cms apart. Beneath these injuries cut fracture of skull present.
i) 7.6 cm ii) 9.5 cm and iii) 8.5 cm in length, the entire thickness of bone involved.
5.Three transverse gaping cut injuries present on occipital region of scalp one below the other, measuring 8x1.5 cms bone deep, 10x1.8 cms bone deep and 9x1.5 cms bone deep. The upper and middle injuries are situated 1.2 cms apart. Beneath these injuries cut fracture of skull present.
i) 7.6 cm ii) 9.5 cm and iii) 8.5 cm in length, the entire thickness of bone involved.
6.6.An abrasion over left cheek present 2 x 1 cm dark brown.
7.An abrasion 1 cm below right eye brow present2x1 cm dark brown.
8.There is diffuse sub-dural and sub-arachnoid haemorrhages present over both cerebral hemispheres.
9.NECK:- An oblique gaping incised wound present over lower aspect of left

side of neck, 4 cm above left clavicle measuring 5x1x3.5 cms with tailing present upwards and backwards (7cms long)
10.CHEST:- An oblique gaping incised wound present over lower aspect of the left side of neck, 4 cm above left clavicle, measuring 5x1x3.5 cms with tailing present upwards and backwards (7cms long).
11.An oblique gaping stab injury present on the lateral aspect of left side of chest on 8th intercostal space in the mid axillary line, measuring 7x2 cms cavity deep directed inwards, backwards and downwards. Margins sharp, angles acute. On dissection, left dome of diaphragm found to be cut 3.8 x 1.5 cms. A stab injury on the superior surface of spleen present 3.5x0.5x0.8 cms.
12.An oblique gaping stab injury present on the right side of chest on 4th inter costal space on mid axillary line measuring 3.5x1.5 cms cavity deep. The wound is directed inwards, backwards and downwards, margins sharp and angles acute.
On dissection: A stab injury present on the outer aspect of upper lobe of right lung 3x1x0.5 cms. Right lung found collapsed. Right pleural cavity contained 200 cc of fluid blood and 50 gms of clotted blood.
13.An oblique gaping stab injury present on the anterior axillary line on 8th inter costal space on right side 3x1.5 cms cavity deep with fracture of 9th rib beneath it. Margins sharp, angles acute. On dissection: A penetrating wound on right dome of diaphragm present 3.5 x 2 cm x entire thickness. A stab injury present on the superolateral aspect of right lobe of liver with tapering inwards. (3.2 cm x 0.5 cm x 1.8 cm).
14.A gaping incised wound over front of right sideo f chest 4 cms below right nipple, measuring 2 x 1 x 0.5 cms.
15.A gaping incised wound over front of right side of chest 7 cm outer and below to right nipple measuring 2 x 1 x 0.5 cms.
16.A gaping incised wound present 2 cm below injury No.15, 0.5 x 0.2 cm skin-deep.
17.A gaping incised wound present 1.5 cm below injury No.16, 0.5 x 0.2 cm skin-deep.
BACK OF TRUNK:
18.A gaping oblique incised wound on left supra scapular area 3 x 1 x 0.5 cms with tailing present upwards and inwards (4 cm).
19, 20 and 21. Three superficial incised wounds linear measuring 5 cm, 7 cm and 9 cm situated one below the other on left supra-scapular region with 2 cm in between the first two injuries and 3 cm between the second and third.
22. A superficial gaping oblique incised wound on the right suprascapular area 4 x 3 x 1 cms with tailing present inwards and downwards (5 cms long).
23. A superficial gaping incised wound present on right infrascapular area 4 x 2 x 0.5 cms.
24. Two stab injuries present on the back of right side of chest 2 cms below.
25. Injury No.23, measuring 3 x 2 cms cavity dep and 3.5 x 1.8 cms cavity-deep. Sharp margins and acute angles (inner margin coinciding) directed inwards, forwards and downwards. On dissection: a stab injury present on the posterior aspect of lower lob of right lung 3 x 1 x 0 .5 cms with tapering inwards.
26 & 27) Two gaping incised wounds presenting as a single wound 4 cms below injury Nos.24 and 25, measuring 3 x 2 x 1 cms and 4.5 x 2 x 1 cms with their neighbouring margin coinciding.

28 & 29) Two gaping incised wounds presenting as a single wound 5 cms below previous injury, 4.5 x 3 x 1.5 cms and 4 x 2 x 1 cms with their neighbouring margins coinciding.
30) A transverse gaping incised wound present 7 cms above to previous injury 4 x 2 x 1 cms with tailing inwards (7 cms long).
31 to 36) A group of six stab injuries presenting as a single injury with multiple extensions like fingers in a hand situated on the lumber region of back of trunk measuring 12 x 6 to 10 cms. On dissection: para-vertebral muscles found cut and a stab injury present on the back of lower half of left kidney 2 x 1 x 0.8 cms. Contusion of mesentery present 7 x 4 x 0.5 cms.
37) An oblique gaping incised wound present on the back of lower part of trunk 2 cms below the previous injury x 4 x 3 x 0.5 cms.
38) An oblique gaping incised wound present 0.5 cm inner to previous injury 3.5 x 2 x 0.5 cms.
39) An oblique gaping incised wound present 3 cms outer to previous injury, 4 x 2 x 1 cms.
40) An oblique gaping incised wound present 4 cms below the previous injury, 3 x 2 x 0.5 cms.
41) An oblique gaping incised wound present 3 cms outer to previous injury 4 x 1 x 0.5 cms.
42) A transverse gaping incised wound present 4 cms below previous injury, 5 x 0.3 x 0.5 cms.
43) A vertically oblique gaping incised wound measuring 4 x 1 x 0.5 cms situated 3 cms inner to previous injury.
44) An oblique linear incised wound present on the thoracic region of back of trunk 6.7 cms long and skin-deep.
45) An oblique linear incised wound present on the mid-scapular region of trunk, 5.3 cms long and skin-deep.
46) An oblique linear incised wound over right scapular region of back, long and skin-deep.

RIGHT LOWER LIMB:
47) A transverse gaping cut injury present on the back of lower onethird of right leg measuring 5 x 2 cms bone-deep.
48) An oblique gaping incised wound present on the inner aspect of upper one-third of right leg 4 x 2 x 0.5 cms.
49) An oblique gaping incised wound over the upper one-third of front of right leg 2 x 1 x cms.

RIGHT UPPER LIMB:
50) A gaping cut injury present on the distal one-third of palmar aspect of right hand 5 x 0.5 x 0.5 cms.

LEFT LOWER LIMB:
51) A vertical gaping incised wound on the upper one third of right forearam 1 x 0.5 x 0.5 cm.
52) A gaping cut injury present on the outer aspect of left ankle 7 x 2 x 1 cms.
53) A gaping cut injury present 1 cm below previous injury, 4 x 1 x 1 cms with fracture of bone beneath it.
54) A gaping cut injury present on the outer aspect of lower onethird of left

leg, 5 x 2 x 1 cms.
55 & 56) Two cut injuries presenting as a single injury with extensions on the middle one-third of outer aspect of left leg measuring 3 x 2 x 1 cms and 3 x 2 x 0.5 cms.
57) A gaping cut injury present on the upper and outer aspect of left knee 7 x 4 cms bone-deep with cut fracture of femur beneath it (5 cms long).
58) A gaping cut injury present on the outer aspect of middle onethird of left thigh 2 x 1 x 0.5 cms.

59) A gaping cut injury present on the outer aspect of upper onethird of left thigh 3 x 1 cms bone-deep with cut fracture of femur beneath it (2.5 cms long).

60. LEFT UPPER LIMB: An oblique incised wound present on the outer aspect of upper one-third of left arm 5 x 2 x 1 cms with tailing present downwards and inwards (4.5 cms).
61) An oblique incised wound present on the outer aspects of middle one-third of left arm 2 x 1 x 1 cms.
61 to 65) 4 cut injuries presenting as a single injury with extensions on the lateral aspect of one-third of left arm 8 x 5 to 7 cms with fracture dislocation of left elbow and cut fracture of left humerus 1.5 cms long.
66) An incised wound present on back of lower one-third of left forearm 7 x 3 x 1.5 cms.
67) An incised wound present on the back of upper one-third of left forearm 7 x 2 x 1.5 cms.
68) An incised wound 2 cms below previous injury, 2.5 x 0.5 x 0.5 cms.
69) An incised wound over middle one-third of inner aspect of left forearm 2 x 1 x 1 cms.
70) An abrasion over dorsum of left hand 3 x 2 cms dark brown.

The doctor issued Ex.P-34, the post-mortem certificate, with his opinion that the death was on account of shock and haemorrhage due to multiple stab and cut injuries.

6. P.W.18, continuing with his investigation, questioned the witnesses and also the doctor, who conducted autopsy. He, thereafter, returned to the scene of occurrence, where he examined some more witnesses whose statements were recorded. He searched for the accused and took stops to trace the Maruthi van bearing Registration No.TN-01-P-306 6, in which the accused arrived at the place of occurrence. He took efforts to trace the accused and to arrest them and on 2.12.1991, came to know that Paramasivam and Sampth and A1 surrendered before XIII Metropolitan Magistrate, Madras. He, thereafter, filed a petition before the learned Magistrate to take them into police custody. On the same day, he seized the Maruthi van at about 6.00 p.m. under a mahazar Ex.P-11 attested by the witnesses. He searched for the other absconding accused and the van, which was seized, was sent to court. At about 5.30 p.m. on 6.12.1991, he arrested A4 when he was near the junction of C.I.T. Nagar and Canal Bank Road in the presence of witnesses. When questioned, A4 gave a statement, the admissible portion of which is Ex.P-16. A4 took the police party to the railway track near Appavoo Nagar and produced

M.O.16, a patta knife, and the same was seized under a cover of mahazar Ex.P-17. A4 was, thereafter, sent to court for remand. The officer questioned the witnesses and also took efforts to trace the other two absconding accused. On 7.12.1991, on the orders of the court, Paramasivam and Sampath as well as A1 were taken into police custody and were questioned at the police station. Sampath gave a statement and the admissible portion of the same is Ex.P-12. Paramasivam also gave a statement, the admissible portion of which is Ex.P-19. A1 gave a statement and Ex.P-20 is the admissible portion of his statement. In pursuance of the admissible portions of the statements, the police party was taken by Sampath to a Vinayagar temple at Corporation Colony, T.Nagar, where M.O.17, the knife, was produced and the same was seized under Ex.P-21. Paramasivam took the police party to the upper portion of the said temple from where, the knife, M.O.25, was seized under a cover of mahazar, Ex.P-25. Sampath took the police party to Corporation Colony First Street and from the house bearing Door No.31, produced a blood-stained polyster lungi and a full sleeve shirt, M.Os.18 and 19 respectively, and they were seized under Ex.P-22. Paramasivam, thereafter, took the police party to Corporation Colony Second Street and from the house baring Door No.31, produced M.Os.20 and 21, a lungi and a shirt, which were seized under a cover of mahazar Ex.P-23. A1 took the police party to Ashok Nagar and from the house bearing Door No.20 at Ganapathy Street, M.Os.22 to 24, on being produced, were seized under Ex.P-24. The witnesses, who attested the mahazars, were questioned and their statements were recorded. The material objects were sent to court under Form 95 on 9.12.1991. The officer arrested A2 and A3 on 14.12.191 while they were near Krishnaveni Theatre at T.Nagar and when questioned, A2 gave a statement, the admissible portion of the same is Ex.P-12. When A3 was questioned, he gave a statement and the admissible portion of the same is Ex.P-13. The police party were taken by A2 to Ranganathan Subway and from a bush near a railway track, he produced M.Os.13 and 14, a shirt and a lungi, which were seized under a mahazar Ex.P-1 4. A3 took the police party to C.I.T. Nagar and produced the knife, M.O.15, which was seized under a cover of mahazar, Ex.P-15. Both the accused were brought to the police station, searched and locked up and they were later sent to court for remand on 15.12.1991. The material objects seized were sent to court with a requisition, Ex.P-28, to forward them for analysis. The officer questioned the auto-driver, who took the injured Umar to the hospital, and recorded his statement. After the completion of investigation, the final report was filed against all the six accused on 20.3.1992.

7. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them and they denied all the incriminating circumstances. A2 examined himself as D.W.1 and also examined three more witnesses as D.Ws.2 to 4. According to D.W.1, who is A2 in the case, he left Madras on 17.11.1991 with a view to visit Sabarimala temple and reached Trichy on 18.11.1991. He has stated that he was staying at the house bearing Door No.40-A in South Tailors Street, belonging to one Ravi, who is a painting contractor, and that he was engaged in painting work at Trichy till 9.12.1991. He has further stated that while he was at Trichy, he has sent letters to D.W.2, Kanchana, whom he married on 14.5.1992 and that he also received two letters from D.W.2. According to him, he had written Ex.D-1, the letter dated 19.11.1991, and Ex.D-2, the letter dated 25.11.1991, addressed to

Kanchana and received Exs.D-3 and D-4, the letters dated NIL, with a post office seal dated 15.12.1991 on Ex.D-4, from Kanchana. To support his evidence, Kanchana, whom D.W.1 subsequently married, was examined as D.W.2. D.W.3 was examined to say that he and A2 were engaged in painting work at Trichy and that on 9.12.1991, the elder brother of A2, informed him that his father is detained by the police and that thereafter, he took A2 to Madras. He has stated that he left Trichy on 17.12.1991. D.W.4 was examined, through whom, Ex. D-5, the appointment order given to P.W.1, and Ex.D-6, the letter dated 13.4.1995 addressed to the court, were marked, to say that the attendance register of P.W.1 for the period from 1.12.1991 to 3.12.1991 is not traceable. In short, through D.W.4, the defence wanted to establish that P.W.1 was at his work-spot and therefore, could not have been present at the scene of occurrence and through the evidence of D.Ws.1 to 3, it wanted to establish that A2 was at Trichy and was not at the scene of occurrence along with the other accused.

8. The learned counsel appearing for the appellants/accused strongly contend that in view of the evidence of D.Ws.1 and 2 supported by D.W.3 and the letters, Exs.D-1 to D-4, it is crystal clear that A2 was not present at the scene of occurrence along with the other accused as he was away at Trichy, being engaged in painting work and therefore, the case of the prosecution is to be rejected against A2. They further contend that since P.W.1 gave prevaricating answers in crossexamination by going back on his earlier statement recorded by the police officer under Section 161 Cr.P.C., his evidence cannot be accepted and that since A3 and A4 are not attributed with any specific overt act, they cannot be found guilty. On the above contentions, we have heard the learned Additional Public Prosecutor and also perused the recorded evidence.

9. The cause of the death of Umar is not in dispute, since the doctor, P.W.17, who conducted autopsy, found as many as 70 injuries and he also stated that all the injuries could have been caused with weapons, like M.Os.15, 16, 17, 22 and 25 and that the death was on account of multiple stab and cut injuries. On the medical evidence, which is not in dispute, we hold that Umar died on account of homicidal violence.

10. The prosecution, before the trial court, examined four witnesses as P.Ws.1 to 4 to establish that the appellants/accused, who were arrayed as A1 to A4, along with two other accused, who later died, formed themselves into an unlawful assembly and in furtherance of the common object of the said unlawful assembly, the deceased was cut to death in broad daylight in a busy locality, like Karaneeswarar Temple Street in Saidapet, Chennai. Of the four witnesses, P.Ws.1 to 3 are the friends of the deceased. P.W.4 was a passer-by in the street, who was proceeding to a shop to buy some articles. The prosecution evidence shows that while the deceased and his friends, P.Ws.1 to 3, were proceeding to the fancy store run by the father of the deceased, to collect the invitation cards for the deceased to distribute them to his friends, they were waylaid by the accused, who came in a Maruthi van and that they shouted at the deceased that he must be cut. According to the witnesses, on seeing the accused with patta knives and on hearing the war cries of the accused, saying that the deceased must be cut, they ran helter skelter and that the deceased was chased by all the accused. The deceased could not

escape and was cut first by Paramasivam and Sampath followed by A1 and A2. He was cut indiscriminately on various parts of his body with patta knives. The other accused, A3 and A4, were standing guard with patta knives. When the witnesses attempted to go near the place, they were threatened and the accused attempted to chase them.

11. Before we take up the evidence of P.W.1, we will take up the evidence of P.Ws.2 to 4. It is no doubt true that P.Ws.2 and 3 are the friends of the deceased. They have deposed in their evidence that they knew the accused even before the occurrence. P.W.4 is an independent witness, in that he had no connection or relationship either with the accused or with the deceased and that he saw the occurrence as he was proceeding to a shop to buy some provisions. On going through the evidence of P.Ws.2 to 4, we are unable to find any material in favour of the accused. It is, no doubt, true that P.Ws.2 and 3 have admitted in cross-examination that they are also involved in criminal cases. We are unable to reject their evidence on the ground that they are involved in criminal cases. In fact, a perusal of the evidence of the witnesses shows that the deceased and his friends as well as the accused are involved in several criminal cases including murder cases. Therefore, this court can easily presume the social background of the deceased, his friends P.Ws.1 to 3, and the accused. The witnesses and the accused stand on the same footing as far as their social background is concerned. We do not, therefore, reject their evidence on that score alone.

12. The contention of the learned counsel that P.W.3 in his statement recorded under Section 161 Cr.P.C., did not implicate A4 and that in his evidence, he did not implicate A3 and therefore, his evidence has to be rejected, cannot be accepted by us. Of course, P.W.3 has stated that he did not say in his statement recorded under Section 161 Cr.P.C. that A4 was present at the scene of occurrence and in his evidence, he did not mention about the presence of A3 and from this alone, this court is unable to reject his evidence, since the witness, P.W.3, would not have mentioned the presence of A4 at the time of investigation, on account of the state of mind in which, he was placed, as he was a witness to a gruesome murder, which was committed in a broad daylight in a busy locality. The fact that he did not mention the name of A3 in his evidence, cannot also be put against the prosecution, since he gave evidence as to what he saw. The fact that P.W.3 did not give evidence, saying that A3 was at the scene of occurrence, does not lead us to to a presumption that A3 was not present at the scene of occurrence, as A3's presence was spoken to by P.W.4, an independent witness, as well as by P.W.2. We, therefore, do not attach much importance to the omission on the part of P.W.3 in not mentioning the name of A4 in his statement recorded under Section 161 Cr.P.C. and in not mentioning the name of A3 in his evidence, as the persons, who were present at the scene of occurrence. The fact that P.Ws.2 and 3 did not attribute any overt act to A3 and A4, will not take away the criminal liability of the above two accused, since the case of the prosecution spoken to by P.Ws.2 to 4, is itself that all the accused came in a Maruthi van, each armed with a patta knife and that they waylaid the deceased, shouted at him that he must be killed, chased him, with patta knives in their hands and that Paramasivam and Sampath inflicted injuries on the deceased, followed by A1 and A2, while A3 and A4 were standing guard. If A3 and A4 did not share

the common object of the other four accused, then there was no reason for them to have accompanied the other accused in the Maruthi van, arming themselves with patta knives and then, chase the deceased by joining with other accused. The fact that they did not inflict injuries, is not a ground to say that they had no common object, since they were with the other accused, who attacked the deceased and stood guard to prevent any help reaching the deceased while he was being cut by the other four accused. The number of injuries noted on the dead body themselves indicate that Umar, the deceased in the case, was almost butchered and there was no need for A3 and A4 to actually inflict injuries to show that they also share the common object of the other accused, since their common object can easily be presumed from their abovementioned conduct. We, therefore, reject the contention of the learned counsel that since A3 and A4 are not attributed with any overt act, the evidence of the witnesses as regards A3 and A4, cannot be accepted. The evidence of P.Ws.2 and 3 is supported by the independent witness, P.W.4. P.W.4 has also given evidence on the lines given by P.Ws.2 and 3. On going through the evidence of P.W.4, we find no infirmity in his evidence and the defence satisfied itself by putting a suggestion that he is a regular visitor to Saidapet court and he is also involved in criminal cases; but, no materials were placed before the court to show that P.W.4 is a witness obliged to police to give false evidence in a criminal case, that too in a grave offence of murder. We, therefore, accept the evidence of P.Ws.2 and 3, which is corroborated by P.W.4.

13. We will now take up the evidence of P.W.1. It is no doubt true that in cross-examination, he gave answers in favour of the accused. It is to be remembered that he was examined in chief on 9.2.1995 and it was over on the same day. The learned advocate appearing for the accused made a request to the court, on instructions from the accused, to defer the cross-examination and accordingly, his crossexamination was deferred. He was later summoned and cross-examined on 20.2.1 995 on which date, the other three witnesses, P.Ws.2 to 4, were also cross-examined. It could be seen from the answers given by the witness, P.W.1, to the questions put by the court that he was threatened by the accused on all the dates, whenever he was produced before the court and that he had also made an oral complaint to the court and requested the court to give him sufficient protection to depose in court. This shows the state of the mind of P.W.1 when he gave answers in cross-examination and also shows that he was threatened even on prior occasions whenever he was produced in court on a prisoner's transfer warrant, as he was an under-trial prisoner at that time, in connection with some other case. He must have been terribly afraid on account of the earlier threats given to him by the accused and therefore, would have been in a quandary as to what he should say to the questions put to him in cross-examination. A perusal of the chiefexamination of P.W.1 shows that he has implicated all the accused and given evidence in the same manner as that of P.Ws.2 to 4; but, in crossexamination he gave certain answers in favour of the accused and as we stated earlier and at the risk of repetition, we will say that he would have given those answers not on account of the fact that he was not present at the scene of occurrence, but on account of the mortal fear, to which he was put by the accused. We, therefore, do not attach much importance to some of the answers given by him in crossexamination and even if, for the sake of arguments, it is to be stated that his evidence is to be rejected, the prosecution cannot fail in view of

the evidence of P.Ws.2 to 4, which is supported by the medical evidence.
14. We will not take up the defence version that A2 was at Trichy on the date of incident. A2 examined himself as D.W.1 and also Kanchana, whom he married later, as D.W.2, and Srinivasan, D.W.3, the person who claimed that he was present along with A2 at Trichy and that they were engaged in painting work. A perusal of the evidence of D. Ws.1 to 3 does not infuse confidence in our mind and it shows that A2 was trying to wriggle out of the situation by coming out with a plea of alibi that he was at Trichy on the date of incident. Ex.D-1, the letter dated 19.11.1991, and Ex.D-2, the letter dated 25.11.1991, written by him from Trichy to Kanchana, D.W.2, by no stretch of imagination, can go to show that A2 was at Trichy on 2.12.1991, the date on which the occurrence took place at Madras. Exs.D-3 and D-4 are not dated and according to D.W.1, he received the letter, Ex.D-3, on 2.12.1991 while he was at Trichy and except for his ipse dixit statement, there was no indication in the letter indicating that the said letter was actually received by A2 at Trichy on 2.12.1991. Similarly, the claim of D.W.1 in his evidence that he received the letter, Ex.D-4, on 5.12.1991, is also not supported by any material. The learned counsel appearing for the appellants/accused brought to our notice the seal of the post office stamped on the two letters. We have carefully perused the seal of the post office. Though we are able to decipher from the seals that they were dated 2.12.1991 and 5.12.1991 on Exs.D-3 and D-4, we are not able to decipher that the seals were affixed by the post office at Trichy and in the absence of any other material, it is not possible for this court to come to a conclusion that the two letters were received by A2 on 2.12.1991 and 5.12.1991 at Trichy. It is not in dispute that the distance between Madras and Trichy is about 320 kilometers and one can cover the distance within about five hours by road and that number of buses including omnibuses and trains are available for anyone to reach Madras and return to Trichy on the same day. In this background, the evidence of D.W.3 that he was at Trichy along with his friend A2, is to be considered. Admittedly, D.W.3 is the friend of A2 and therefore, he was obliged to give evidence in favour of his friend. It is to be stated at this stage that D.W.3 did not even whisper a word in chief-examination that he and A2 were at Trichy on 2.12.1991, though he was specifically examined for that purpose. The defence at least could have examined Ravi, the paining contractor, who allegedly engaged A2 and D.W.3 to do the painting work, since if he had been examined, he would have produced some materials to indicate that A2 (D.W.1) and D.W.3 were engaged by him do to the painting work and they received the daily wages including the wages for 2.12.1991. The defence did not even attempt to summon the said Ravi, who allegedly engaged A2 and D.W.3. The plea of alibi though is a best defence if proved, would also be a worst defence if it stands unproved. That is the trouble with alibis. They are the best and the worst. It is best because if an accused was not at the place where the man was murdered, then he could not have murdered him. It is worst because once an accused raises a plea of alibi, no other defence, like self-defence, accident or extreme provocation, is available to him. As he was not present, he could not have been provoked and he could not have been threatened by a man for him to pick up a weapon to defend himself and if the plea of alibi is disbelieved, then it is the end of the matter. Once an accused commits himself to a plea of alibi, it is the only mode of escape for him and if it breaks down, he must wait as composedly as he can for the sentence. Therefore, the wise criminal thinks carefully

before he relies on an alibi and the wisest prepares it in advance, as in a military operation, with watches synchronised and excellent reasons arranged for the supporters of his alibi being able to remember the time when the accused was supposed to have been with them. The accused having taken a plea of alibi, had to establish it at least by preponderance of probabilities, if not by any proof, which is beyond all reasonable doubt and the court cannot lose sight of the provisions of Section 106 of the Evidence Act, which states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and the facts in this case show that A2 has not discharged his burden to establish that he was at Trichy on 2 .12.1991.The discussion,which we have made above, therefore, shows that the plea of alibi has to fall to the ground like nine pins, since it is not supported by any material and the four documents, Exs.D-1 to D-4, do not conclusively establish that A2 was at Trichy on the relevant date and at the relevant point of time. We, therefore, reject the plea of alibi taken by A2.

15. The evidence of D.W.4 is neither here nor there and all that this court finds from his evidence is that the attendance register of P.W.1 was not traceable in the office and from this, it cannot be inferred that it was P.W.1, who went and destroyed the attendance register and that the officers working in the Railway Department colluded with P.W.1 and destroyed the document, so that the defence could not prove that P.W.1 was in his office on that day. The evidence of D.W.4 is, therefore, of no use either to the prosecution or to the defence.

16. On the discussion made above, we are of the view that the learned Sessions Judge was justified in convicting and sentencing the appellants/accused as stated earlier and we find no reason to interfere with the judgment of the learned Sessions Judge.

17. In the result, the appeal deserves to be dismissed and is, accordingly, dismissed. It is reported that the appellants/accused are on bail. If so, the learned Sessions Judge shall take steps to commit them to undergo the remaining period of sentence.

Index : Yes
Website: Yes

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To

1.The IV Additional Sessions Judge, Madras.
2.The IV Additional Sessions Judge, Madras, through the Principal Sessions Judge, Madras
3.The Chief Judicial Magistrate, Trichy
4.The IX Metropolitan Magistrate, Saidapet, Madras.

5.The IX Metropolitan Magistrate, Saidapet, Madras, through the Chief Metropolitan Magistrate, Egmore, Madras.
6.The District Collector, Madras.
7.The Public Prosecutor, High Court, Madras.
8.The Director General of Police, Madras.
9.The Superintendent, Central Prison, Vellore.
10.The Inspector of Police, J-1 Saidapet Police Station, Madras.